



DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

[Docket DARS-2021-0012]

RIN 0750-AK85

Defense Federal Acquisition Regulation Supplement: Maximizing the Use of American-Made Goods, Products, and Materials (DFARS Case 2019-D045)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement an Executive order regarding maximizing the use of American-made goods, products, and materials.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bass, telephone 571-372-6174.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is issuing a final rule amending the DFARS to implement Executive Order (E.O.) 13881, Maximizing Use of American-made Goods, Products, and Materials, which calls for more aggressive implementation of the Buy American statute (41 U.S.C. chapter

83) to maximize the Government's procurement of American-made goods, products, and materials. The Buy American statute requires the purchase of domestic products (both end products and construction materials), except when the domestic product is not available, the domestic product is only available at an unreasonable cost, or it would not be in the public interest to buy the domestic product.

E.O. 13881 supersedes E.O. 10582, Prescribing Procedures for Certain Determinations under the Buy American Act. E.O. 13881 establishes that under the Buy American statute a product is foreign if the cost of all foreign components used in such product constitutes 45 percent or more of the cost of all components, except that iron and steel products are foreign if the cost of foreign iron and steel equals or exceeds 5 percent of the cost of all components. This rule strengthens domestic preferences under the Buy American statute, as required by E.O. 13881, by changing how a domestic product is defined, while also maintaining the exception for qualifying countries.

DoD published a proposed rule in the **Federal Register** at 86 FR 48370 on August 30, 2021. Five respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments is provided. There were no changes made to the proposed rule as a result of those comments.

A. Analysis of Public Comments

1. Support for the Rule

Comment: Several respondents expressed support for the rule, and stated that the United States Government should maximize the use of goods, products, and materials produced in the United States; the rule benefits the overall intent of the strategic national defense policy; and is an effective regulatory technique for incentivizing the domestic industry as a whole. A respondent further stated the overall public policy and public opinion are already gravitating toward the increase of domestic production, which only serves to further incentivize the increase in this type of production. This respondent supports the increased domestic content requirements for iron and steel and iron and steel products such as fasteners.

Response: DoD acknowledges the respondents' support for the rule.

2. Commercially Available-Off-the-Shelf (COTS) Items

Exception - COTS Waiver for Fasteners

Comment: A couple of respondents conveyed that the waiver of the domestic content test of the Buy American statute for the acquisition of COTS fasteners would create a competitive disadvantage for domestic fastener manufacturers, especially when all other COTS waivers were removed for iron and steel products in Federal Acquisition Regulation (FAR) Case 2019-016 (86 FR 6180, January 19, 2021). A respondent further stated that to keep the COTS waiver for fasteners but remove it for all

other iron and steel products only further worsened the competitive field for fastener manufacturers.

A respondent further stated that currently, a COTS item is considered compliant with the Buy American statute if its final stage of manufacturing occurs in the United States, without regard for the origin of the COTS components. The respondent also stated that this policy stands in stark contrast with the goals of other domestic content preferences, particularly the Buy America statute that applies to Federal assistance infrastructure programs that explicitly provides that products are only considered American-made if all manufacturing processes from the initial melting stage through the application of coatings take place in the United States. The COTS waiver takes the opposite approach with negative consequences for upstream suppliers of raw materials and subcomponents of products and allows for products that are entirely comprised of foreign material to be considered American-made so long as the final processing stage occurs in the United States.

Response: The roll-back of the COTS waiver is necessary to give full effect to the E.O. 13881 requirement. The fasteners being exempted from the domestic content requirement are those that are COTS items. The current FAR contract clauses implementing the Buy American statute apply to a narrow set of procurements. In addition, because the Federal Acquisition Regulatory Council retained the COTS items exception for most COTS items in its implementation of the E.O. in the FAR, the

heightened domestic content requirements will not be applicable to those procurements. (See the final rule for FAR Case 2019-016 published at 86 FR 6180 on January 19, 2021.) This DFARS rule takes the same approach.

3. Unreasonable Cost

Comment: A respondent stated that the Buy American statute requires the purchase of domestic products, except if the product is only available at an unreasonable cost, and recommended the addition of a percent cost above nondomestic goods, products, and materials to ensure it is followed more specifically. The respondent further recommended the inclusion of a financial credit for those that comply with the Buy American statute.

Response: To implement E.O. 13881 no revisions were required in the rule to change the percentage factor used to determine whether the offered price of material of domestic origin is unreasonable or inconsistent with public interest. In order to determine whether the cost of a domestic product is unreasonable, E.O. 13881 increased the minimum percentage factor from 6 percent to 20 percent for other than small businesses and from 12 percent to 30 percent for small businesses (86 FR 6180, January 19, 2021). If the price of the domestic product exceeds the price of the foreign product by more than 20 percent for other than small businesses, then the price of the domestic product is unreasonable. This does not apply to DoD, since DoD

already uses a 50 percent factor for both small and other than small businesses.

4. Public Interest Definition

Comment: A respondent recommended a better definition of what would not be in the public interest.

Response: DoD acknowledges the comment regarding creation of a new public interest definition. A definition to determine what would not be in the public interest is not required and would be inconsistent with the implementation in the final rule for FAR case 2019-016 published at 86 FR 6180, on January 19, 2021.

5. Outside the Scope of the Rule

Comment: A respondent conveyed that excluding COTS items from the Buy American statute impairs the statute from achieving the stated purpose of the E.O. 14005, Ensuring the Future Is Made in All of America by All of America's Workers. Another respondent stated that the continuation of a COTS waiver for fasteners is no longer valid.

Additionally, a respondent provided comments regarding the OMB Memorandum M-21-26, Increasing Opportunities for Domestic Sourcing and Reducing the Need for Waivers from Made in America Laws, and impacts on COTS waivers. The respondent also recommended keeping the fastener language in DFARS 252.225-7009, Restriction on Acquisition of Specialty Metals, for fasteners provided to the six major DoD programs as it allows for improved efficiency for U.S. fastener manufacturers providing both

commercial and defense applications to the same prime contractor, while still protecting the domestic steel and fastener industries.

Another respondent provided comments in response to the final rule for FAR case 2019-016 published at 86 FR 6180 on January 19, 2021.

Response: This final rule implements E.O. 13881, Maximizing Use of American-made Goods, Products, and Materials, in the DFARS in accordance with the E.O. requirements, and supplements the FAR in accordance with the final rule as published implementing E.O. 13881 (86 FR 6180, dated January 19, 2021). The respondent's comment that excluding COTS items from the Buy American statute impairs the statute from achieving the stated purpose of the E.O. 14005, Ensuring the Future Is Made in All of America by All of America's Workers, is outside the scope of this rule.

The respondent's comment referencing the OMB Memorandum M-21-26, Increasing Opportunities for Domestic Sourcing and Reducing the Need for Waivers from Made in America Laws, is outside the scope of this rule.

Lastly, the comment referencing the requirements in DFARS 252.225-7009, Restriction on Acquisition of Specialty Metals, is outside the scope of this rule.

B. Other Changes

Paragraph (2) of the definition of "domestic construction material" has been revised in the following clauses to refer to

the definition of "cost of components" instead of paragraph (1)(ii)(A) of the definition of "domestic construction material": 252.225-7044 (basic clause and alternate I) and 252.225-7045 (basic clause and alternates I through III). Paragraph (1)(ii)(A) does not provide information regarding the cost of components, which is located in the definition of that term.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold, for Commercial Products Including Commercially Available Off-the-Shelf Items, and for Commercial Services

This final rule does not add any new provisions or clauses, nor change the applicability of existing provisions or clauses to contracts at or below the simplified acquisition threshold, contracts for the acquisition of commercial products including commercially available off-the-shelf items, and for commercial services.

IV. Expected Impact of the Rule

The current FAR contract clauses implementing the Buy American statute apply to a narrow set of procurements. In addition, because the Federal Acquisition Regulatory Council retained the COTS items exception for most COTS items in its implementation of E.O. 13881 in the FAR, the heightened domestic content requirements will not be applicable to those procurements. (See the final rule for FAR Case 2019-016 published at 86 FR 6180 on

January 19, 2021.) This final DFARS rule takes the same approach.

Domestic industries supplying domestic end products are likely to benefit from a competitive advantage as a result of the FAR and DFARS implementation. Based on the E.O., it is unclear if the pool of qualified suppliers would be reduced, resulting in less competition and a possible increase in prices that the Government will pay to procure these products. At least three arguments point to the likelihood that any increase in burden on contractors would be small, if not de minimis:

(1) Familiarization costs should be low.

(2) Some, if not many, contractors may already be able to meet the more stringent threshold.

(3) Costs incurred by contractors who adjust their supply chains, so that their end products qualify as domestic, will enjoy a larger price preference that should help to offset these costs over time.

Each of these arguments is explained below.

First, DoD does not anticipate significant costs from contractor familiarization with the rule given the publication of the FAR final rule implementing E.O. 13881 and the history of rulemaking and E.O.s in general in this area. The basic mechanics of the Buy American statute (e.g., how and when the price preference is used to favor domestic end products, certifications required of offerors to demonstrate end products

are domestic) continue to reflect processes that have been in place for decades and are not new to contractors.

Second, some, if not many, contractors may already be able to comply with the lower foreign content requirement needed to meet the definition of domestic end product under E.O. 13881 and the final rule. Laws such as the SECURE Technology Act (Pub. L. 115-390), which requires a series of actions to strengthen the Federal infrastructure for managing supply chain risks, are placing significantly increased emphasis on Federal agencies and Federal Government contractors to identify and reduce risk in their supply chains.

One way to reduce supply chain risk is to increase domestic sourcing of content. In addition, in the context of iron and steel, many laws already in place call for more stringent accounting of domestic sourcing of content. For example, the Recovery Act required that all construction material for a project for the construction, alteration, maintenance, or repair of a public building or a public work in the United States, consisting wholly or predominantly of iron or steel, had to be produced in the United States when using Recovery Act funds, to the extent consistent with trade agreements (see FAR 25.602-1, implementing section 1605 of the Recovery Act).

In addition, Federal contractors who also work on contracts funded under Federal grants may, in some cases, find that the steel, iron, and manufactured goods used in the project must be produced in the United States, as is the case for certain

funding administered by the Federal Transit Administration for public transportation projects (see 49 U.S.C. 5323(j)).

Third, it is anticipated that some contractors' products and construction materials may not meet the definition of domestic end product and domestic construction material unless the contractors take steps to adjust their supply chains to increase the domestic content. Those contractors that make a business decision not to modify their supply chains will still be able to bid on DoD contracts but will no longer enjoy a price preference.

Accordingly, it is likely that the Federal market for iron and steel has already completed significant retooling and could meet the requirements of E.O. 13881 without too much additional effort.

This rule amends the clauses that implement the Buy American statute. There are four clauses affected by the changes in this rule:

(1) 252.225-7001, Buy American and Balance of Payments Program (Basic and Alternate I).

(2) 252.225-7036, Buy American-Free Trade Agreements-Balance of Payments Program (Basic and Alternates I-V).

(3) 252.225-7044, Balance of Payments Program-Construction Material (Basic and Alternate I).

(4) 252.225-7045, Balance of Payments Program-Construction Material (Basic and Alternates I-III).

This rule changes the definitions of "domestic end product" and "domestic construction material." The rule also adds the definitions of "steel" and "predominantly of iron or steel or a combination of both" in the clauses to conform the DFARS with the FAR implementation of E.O. 13881.

According to the Federal Procurement Data System (FPDS) data for fiscal year (FY) 2017, FY 2018, and FY 2019 for new awards with a foreign place of performance for construction valued over the micro-purchase threshold and for awards for supplies, DoD awarded an average of 3,222 construction contracts with a foreign place of performance per year. In addition, DoD awarded an average of 332,607 supply contracts per year during FY 2017 through FY 2019.

In summary, the rule will strengthen domestic preferences under the Buy American statute and provide both large and small businesses the opportunity and incentive to deliver U.S. manufactured products from domestic suppliers. It is expected that this rule will benefit large and small U.S. manufacturers, including those of iron or steel.

Therefore, based on public comments received, DoD has concluded that the initial assessment is correct that the cost impact of this rule is not significant, and any impact is predominantly positive.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory

alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VII. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule is required to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Executive Order

(E.O.) 13881, Maximizing Use of American-Made Goods, Products, and Materials, and also to make conforming changes to the applicable clauses as a result of implementation of the E.O. in the Federal Acquisition Regulation (FAR).

The objective of this rule is to strengthen domestic preferences under the Buy American statute, as required by E.O. 13881, by changing how a domestic end product and domestic construction material are defined.

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

Data was obtained from the Federal Procurement Data System (FPDS) for new awards valued over the micro-purchase threshold in fiscal year (FY) 2017, FY 2018, and FY 2019 that had a foreign place of performance and were for construction. DoD awarded an average of 3,222 construction contracts with a foreign place of performance per year during FY 2017 through FY 2019. Of those construction contracts, approximately 65 were awarded to 32 unique small entities per year.

Data was also obtained from FPDS for FY 2017 through FY 2019 for new awards valued over the micro-purchase threshold for supplies made in the United States. DoD awarded an average of 332,607 supply contracts per year during FY 2017 through FY 2019. Of those supply contracts, approximately 154,422 supply contracts were awarded to 13,480 unique small entities per year.

The rule will strengthen domestic preferences under the Buy American statute and provide small businesses the opportunity

and incentive to deliver U.S. manufactured products from domestic suppliers. It is expected that this rule will benefit U.S. small business manufacturers, including those of iron or steel. Small business manufacturers who do not already meet the increased domestic content requirements of this proposed rule may need to adjust their supply chains. DoD does not have data on how many small business manufacturers may decide to make such adjustments.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses, other than to increase the percentages used in the domestic content test applied to offers of manufactured end products.

There are no known significant alternative approaches to the rule that would meet the requirements of E.O. 13881.

VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

1. The authority citation for parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

2. Amend section 225.003 by—

a. Revising the definition of “Domestic end product”;

b. Removing the definition “Qualifying country component and qualifying country end product”; and

c. Adding definitions for “Qualifying country component” and “Qualifying country end product” in alphabetical order.

The revision and additions read as follows:

225.003 Definitions.

* * * * *

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the

United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a commercially available off-the-shelf (COTS) item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet),

castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

* * * * *

Qualifying country component means a component mined, produced, or manufactured in a qualifying country.

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and

reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

* * * * *

3. Amend section 225.101 by revising paragraph (a)(ii) to read as follows:

225.101 General.

(a) * * *

(ii) (A) Except for an end product that consists wholly or predominantly of iron or steel or a combination of both, the cost of its U.S. and qualifying country components exceeds 55 percent of the cost of all its components. This test is applied to end products only and not to individual components.

(B) For an end product that consists wholly or predominantly of iron or steel or a combination of both, the cost of iron and steel not produced in the United States or a qualifying country must constitute less than 5 percent of the cost of all the components used in the end product. The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a

qualifying country, excluding commercially available off-the-shelf (COTS) fasteners. The domestic content test of the Buy American statute has not been waived for acquisitions of COTS items in this category, except for COTS fasteners.

* * * * *

225.502 [Amended]

4. Amend section 225.502 by—

a. In paragraph (c)(ii)(B), removing “225.504(1)” and adding “PGI 225.504(1)” in its place;

b. In paragraph (c)(ii)(D), removing “225.504(2)” and adding “PGI 225.504(2)” in its place;

c. In paragraph (c)(ii)(E)(1), removing “225.504(3)” and adding “PGI 225.504(3)” in its place; and

d. In paragraph (c)(ii)(E)(2), removing “225.504(4)” and adding “PGI 225.504(4)” in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Amend section 252.225-7001 by—

a. Removing the clause date of “(MAR 2022)” and adding “(JUN 2022)” in its place;

b. In paragraph (a)—

i. In the definition of “Commercially available off-the-shelf (COTS) item”, redesignating paragraphs (i) introductory text, (i)(A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1)(i), (ii), and (iii), and (2), respectively;

ii. Revising the definition of “Domestic end product”;

iii. Adding, in alphabetical order, the definition of "Predominantly of iron or steel or a combination of both";

iv. Revising the definition of "Qualifying country end product"; and

v. Adding, in alphabetical order, the definition of "Steel"; and

c. In Alternate I—

i. Removing the clause date of "(MAR 2022)" and adding "(JUN 2022)" in its place; and

ii. In paragraph (a)—

A. In the definition of "Commercially available off-the-shelf (COTS) item", redesignating paragraphs (i) introductory text, (i) (A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1) (i), (ii), and (iii), and (2), respectively;

B. Revising the definition of "Domestic end product";

C. Adding, in alphabetical order, the definition of "Predominantly of iron or steel or a combination of both";

D. Revising the definition of "Qualifying country end product";

E. In the definition of "South Caucasus/Central and South Asian (SC/CASA) state end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively; and

F. Adding, in alphabetical order, the definition of "Steel".

The revisions and additions read as follows:

252.225-7001 Buy American and Balance of Payments Program.

* * * * *

(a) * * *

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the

materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

* * * * *

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and

reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

Alternate I. * * *

(a) * * *

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the

United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a

qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1) (ii) (A) of this definition.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

* * * * *

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

* * * * *

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

6. Amend section 252.225-7036 by—

a. Removing the clause date of "(MAR 2022)" and adding "(JUN 2022)" in its place.

b. In paragraph (a)—

i. In the definition of "Bahrainian end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

ii. In the definition of "Commercially available off-the-shelf (COTS) item", redesignating paragraphs (i) introductory text, (i) (A), (B), and (C), and (ii) as paragraphs (1)

introductory text, (1)(i), (ii), and (iii), and (2), respectively;

iii. Revising the definition of "Domestic end product";

iv. In the definition of "Free Trade Agreement country", removing the semicolon and adding a period in its place;

v. In the definitions of "Free Trade Agreement country end product", "Moroccan end product", "Panamanian end product", and "Peruvian end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

vi. Adding, in alphabetical order, the definition of "Predominantly of iron or steel or a combination of both";

vii. Revising the definition of "Qualifying country end product"; and

viii. Adding, in alphabetical order, the definition of "Steel".

c. In Alternate I—

i. Removing the clause date of "(MAR 2022)" and adding "(JUN 2022)" in its place; and

ii. In paragraph (a)—

A. In the definitions of "Bahrainian end product" and "Canadian end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

B. In the definition of "Commercially available off-the-shelf (COTS) item", redesignating paragraphs (i) introductory text, (i)(A), (B), and (C), and (ii) as paragraphs (1)

introductory text, (1)(i), (ii), and (iii), and (2), respectively;

C. Revising the definition of "Domestic end product";

D. In the definition of "Free Trade Agreement country", removing the semicolon and adding a period in its place;

E. In the definitions of "Free Trade Agreement country end product", "Moroccan end product", "Panamanian end product", and "Peruvian end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

F. Adding, in alphabetical order, the definition of "Predominantly of iron or steel or a combination of both";

G. Revising the definition of "Qualifying country end product"; and

H. Adding, in alphabetical order, the definition of "Steel".

d. In Alternate II—

i. Removing the clause date of "(MAR 2022)" and adding "(JUN 2022)" in its place; and

ii. In paragraph (a)—

A. In the definition of "Bahrainian end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

B. In the definition of "Commercially available off-the-shelf (COTS) item", redesignating paragraphs (i) introductory text, (i)(A), (B), and (C), and (ii) as paragraphs (1)

introductory text, (1)(i), (ii), and (iii), and (2), respectively;

C. Revising the definition of "Domestic end product";

D. In the definition of "Free Trade Agreement country", removing the semicolon and adding a period in its place;

E. In the definitions of "Free Trade Agreement country end product", "Moroccan end product", "Panamanian end product", and "Peruvian end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

F. Adding, in alphabetical order, the definition of "Predominantly of iron or steel or a combination of both";

G. Revising the definition of "Qualifying country end product";

H. In the definition of "South Caucasus/Central and South Asian (SC/CASA) state end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively; and

I. Adding, in alphabetical order, the definition of "Steel".

e. In Alternate III—

i. Removing the clause date of "(MAR 2022)" and adding "(JUN 2022)" in its place; and

ii. In paragraph (a)—

A. In the definitions of "Bahrainian end product" and "Canadian end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

B. In the definition of "Commercially available off-the-shelf (COTS) item", redesignating paragraphs (i) introductory text, (i) (A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1) (i), (ii), and (iii), and (2), respectively;

C. Revising the definition of "Domestic end product";

D. In the definition of "Free Trade Agreement country", removing the semicolon and adding a period in its place;

E. In the definitions of "Free Trade Agreement country end product", "Moroccan end product", "Panamanian end product", and "Peruvian end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

F. Adding, in alphabetical order, the definition of "Predominantly of iron or steel or a combination of both";

G. Revising the definition of "Qualifying country end product";

H. In the definition of "South Caucasus/Central and South Asian (SC/CASA) state end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively; and

I. Adding, in alphabetical order, the definition of "Steel".

f. In Alternate IV—

i. Removing the clause date of "(MAR 2022)" and adding "(JUN 2022)" in its place; and

ii. In paragraph (a)—

A. In the definition of "Bahrainian end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

B. In the definition of "Commercially available off-the-shelf (COTS) item", redesignating paragraphs (i) introductory text, (i) (A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1) (i), (ii), and (iii), and (2), respectively;

C. Revising the definition of "Domestic end product";

D. In the definition of "Free Trade Agreement country", removing the semicolon and adding a period in its place;

E. In definitions of "Free Trade Agreement country end product", "Korean end product", "Moroccan end product", "Panamanian end product", and "Peruvian end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

F. Adding, in alphabetical order, the definition of "Predominantly of iron or steel or a combination of both";

G. Revising the definition of "Qualifying country end product"; and

H. Adding, in alphabetical order, the definition of "Steel".

g. In Alternate V—

i. Removing the clause date of "(MAR 2022)" and adding "(JUN 2022)" in its place; and

ii. In paragraph (a)—

A. In the definition of "Bahrainian end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

B. In the definition of "Commercially available off-the-shelf (COTS) item", redesignating paragraphs (i) introductory text, (i) (A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1) (i), (ii), and (iii), and (2), respectively;

C. Revising the definition of "Domestic end product";

D. In the definition of "Free Trade Agreement country", removing the semicolon and adding a period in its place;

E. In the definitions of "Free Trade Agreement country end product", "Korean end product", "Moroccan end product", "Panamanian end product", and "Peruvian end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

F. Adding, in alphabetical order, the definition of "Predominantly of iron or steel or a combination of both";

G. Revising the definition of "Qualifying country end product";

H. In the definition of "South Caucasus/Central and South Asian (SC/CASA) state end product", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively; and

I. Adding, in alphabetical order, the definition of "Steel".

The revisions and additions read as follows:

252.225-7036 Buy American—Free Trade Agreements—Balance of Payments Program.

* * * * *

(a) * * *

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the

materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

* * * * *

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory

quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

Alternate I. * * *

(a) * * *

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in

fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(C) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners.

Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

* * * * *

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

Alternate II. * * *

(a) * * *

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign.

Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet),

castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

* * * * *

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

* * * *

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

Alternate III. * * *

(a) * * *

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing

processes of the iron and steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

* * * * *

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

* * * * *

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

Alternate IV. * * *

(a) * * *

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron

and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings

utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

* * * * *

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

Alternate V. * * *

(a) * * *

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of iron and steel not produced in the United States or a qualifying country constitutes less than 5 percent of the cost of all the components used in the end product (produced in the United States or a qualifying country means that all manufacturing processes of the iron or steel must take place in the United States or a qualifying country, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States or a qualifying country includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States or a qualifying country, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States or a qualifying country, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the explanation of cost of components in paragraph (1)(ii)(A) of this definition.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent

of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

* * * * *

Qualifying country end product means—

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if—

(i) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States. Components of unknown origin are treated as foreign; or

(ii) The end product is a COTS item.

* * * * *

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

7. Amend section 252.225-7044 by—

a. Removing the clause date of “(NOV 2014)” and adding “(JUN 2022)” in its place.

b. In paragraph (a)—

i. In the definition of “Commercially available off-the-shelf (COTS) item”, redesignating paragraphs (i) introductory text, (i) (A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1) (i), (ii), and (iii), and (2), respectively;

ii. In the definition of “Cost of components”, redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

iii. Revising the definition of “Domestic construction material”; and

iv. Adding, in alphabetical order, the definitions of “Predominantly of iron or steel or a combination of both” and “Steel”.

c. In Alternate I—

i. Removing the clause date of “(NOV 2014)” and adding “(JUN 2022)” in its place; and

ii. In paragraph (a)—

A. In the definition of "Commercially available off-the-shelf (COTS) item", removing the quotation mark, redesignating paragraphs (i) introductory text, (i) (A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1) (i), (ii), and (iii), and (2), respectively;

B. In the definition of "Cost of components", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

C. Revising the definition of "Domestic construction material";

D. Adding, in alphabetical order, the definition of "Predominantly of iron or steel or a combination of both";

E. In the definition of "SC/CASA state construction material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively; and

F. Adding, in alphabetical order, the definition of "Steel".

The revisions and additions read as follows:

252.225-7044 Balance of Payments Program—Construction Material.

* * * * *

(a) * * *

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the end product and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated

as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of "cost of components" in this clause.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

Alternate I. * * *

(a) * * *

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost

of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such

construction material is calculated in accordance with the definition of "cost of components" in this clause.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

* * * * *

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

8. Amend section 252.225-7045 by—

a. Removing the clause date of "(AUG 2019)" and adding "(JUN 2022)" in its place.

b. In paragraph (a)—

i. In the definition of "Caribbean Basin country construction material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

ii. In the definition of "Commercially available off-the-shelf (COTS) item", redesignating paragraphs (i) introductory text, (i) (A), (B), and (C), and (ii) as paragraphs (1)

introductory text, (1)(i), (ii), and (iii), and (2), respectively;

iii. In the definition of "Cost of components", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

iv. In the definition of "Designated country", redesignating paragraphs (i), (ii), (iii), and (iv) as paragraphs (1), (2), (3), and (4), respectively;

v. Revising the definition of "Domestic construction material";

vi. In the definitions of "Free Trade Agreement country construction material" and "Least developed country construction material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

vii. Adding, in alphabetical order, the definitions of "Predominantly of iron or steel or a combination of both" and "Steel"; and

viii. In the definition of "WTO GPA country construction material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively.

c. In Alternate I—

i. Removing the clause date of "(AUG 2019)" and adding "(JUN 2022)" in its place; and

ii. In paragraph (a)—

A. In the definitions of "Bahrainian or Mexican construction material" and "Caribbean Basin country construction

material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

B. In the definition of "Commercially available off-the-shelf (COTS) item", redesignating paragraphs (i) introductory text, (i) (A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1) (i), (ii), and (iii), and (2), respectively;

C. In the definition of "Cost of components", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

D. In the definition of "Designated country", redesignating paragraphs (i), (ii), (iii), and (iv) as paragraphs (1), (2), (3), and (4), respectively;

E. Revising the definition of "Domestic construction material";

F. In the definition of "Free Trade Agreement country construction material" and "Least developed country construction material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

G. Adding, in alphabetical order, the definitions of "Predominantly of iron or steel or a combination of both" and "Steel"; and

H. In the definition of "WTO GPA country construction material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively.

d. In Alternate II-

i. Removing the clause date of "(AUG 2019)" and adding "(JUN 2022)" in its place; and

ii. In paragraph (a)–

A. In the definition of "Caribbean Basin country construction material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

B. In the definition of "Commercially available off-the-shelf (COTS) item", redesignating paragraphs (i) introductory text, (i) (A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1) (i), (ii), and (iii), and (2), respectively;

C. In the definition of "Cost of components", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

D. In the definition of "Designated country", redesignating paragraphs (i), (ii), (iii), and (iv) as paragraphs (1), (2), (3), and (4), respectively;

E. Revising the definition of "Domestic construction material";

F. In the definitions of "Free Trade Agreement country construction material" and "Least developed country construction material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

G. Adding, in alphabetical order, the definition of "Predominantly of iron or steel or a combination of both";

H. In the definition of "SC/CASA state construction material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

I. Adding, in alphabetical order, the definition of "Steel"; and

J. In the definition of "WTO GPA country construction material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively.

e. In Alternate III—

i. Removing the clause date of "(AUG 2019)" and adding "(JUN 2022)" in its place; and

ii. In paragraph (a)—

A. In the definition of "Caribbean Basin country construction material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

B. In the definition of "Commercially available off-the-shelf (COTS) item", redesignating paragraphs (i) introductory text, (i) (A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1) (i), (ii), and (iii), and (2), respectively;

C. In the definition of "Cost of components", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

D. In the definition of "Designated country", redesignating paragraphs (i), (ii), (iii), and (iv) as paragraphs (1), (2), (3), and (4), respectively;

E. Revising the definition of "Domestic construction material";

F. In the definitions of "Free Trade Agreement country construction material" and "Least developed country construction material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

G. Adding, in alphabetical order, the definition of "Predominantly of iron or steel or a combination of both";

H. In the definition of "SC/CASA state construction material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

I. Adding, in alphabetical order, the definition of "Steel"; and

J. In the definition of "WTO GPA country construction material", redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively.

The revisions and additions read as follows:

252.225-7045 Balance of Payments Program—Construction Material Under Trade Agreements.

* * * * *

(a) * * *

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS

fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of "cost of components" in this clause.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

Alternate I. * * *

(a) * * *

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS

fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of "cost of components" in this clause.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

Alternate II. * * *

(a) * * *

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of all iron or steel components not produced in the United States, excluding COTS

fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of "cost of components" in this clause.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

* * * * *

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

Alternate III. * * *

(a) * * *

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of iron and steel not produced in the United States (excluding fasteners) as estimated in good faith by the contractor, constitutes less than 5 percent of the cost of all the components used in such construction material (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives). The cost of iron and steel not produced in the United States includes but is not limited to the cost of iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings, not produced in the United States, utilized in the manufacture of the construction material and a good faith estimate of the cost of iron or steel components not produced in the United States, excluding COTS

fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of "cost of components" in this clause.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

* * * * *

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *